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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/051,648	01/18/2002	Rudy Mazzocchi	MVA1001USC6	8853
9561	7590	12/10/2004	EXAMINER	
POPOVICH, WILES & O'CONNELL, PA 650 THIRD AVENUE SOUTH SUITE 600 MINNEAPOLIS, MN 55402			BUI, VY Q	
			ART UNIT	PAPER NUMBER
			3731	

DATE MAILED: 12/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/051,648

Applicant(s)

MAZZOCCHI ET AL.

Examiner

Vy Q. Bui

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-126 is/are pending in the application.
- 4a) Of the above claim(s) 53-126 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 49-52 is/are allowed.
- 6) ☒ Claim(s) 1-44 is/are rejected.
- 7) ☒ Claim(s) 45-48 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>6/11, 14/03, 1/10/02</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Claims 53-126 including a balloon catheter are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species not shown in elected species in Figs. 12a-12b, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 8/12/2004.

The applicants traverse the restriction because "the Examiner has indicated one class and one subclass for the subject matter of Groups I, II, III and IV and a search involving only one class and one subclass within the same subject matter does not constitute a serious burden on the Examiner".

In response, the Examiner would like to bring to the Applicants' attention that class 606/108 was referred to in the previous restriction to broadly cover all subject matters claimed in the present application. Further consideration of the claims in this present application would clearly indicate that the subject matters in claims 1-52, which include a filter element having retraction members, at least would be properly classified in 606/200, and the subject matters in claims 53-76, which include delivery catheter and retrieval catheter, at least would be properly classified in class 606/108, and claims 77-126, which include a balloon catheter, at least would be properly classified in 606/194 or 604/94. Therefore, an examination of all claims 1-126 would constitute a serious burden to the Examiner.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, "a drawstring/a peripheral edge " as recited in claims 45-48 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing-sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

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Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 5-14, 16-20, 22-23, 25, 27-36, 38-42 and 44 are rejected under 35 U.S.C. 102(b) as being anticipated by GIFFORD, III et al.-4,926,858.

As to claims 1, 3, 5-14, 16-20, 22-23, 25, 27-36, 38-42 and 44, CLIFFORD, III-'858 (Figs. 1-5, 8-10, for example) discloses guidewire 25/125, wire-braided mesh 20/120 comprising a distal conical half as a filter element and a proximal half as retraction members, distal band 23/123, proximal band 24/124, flexible tapered tip portion 22/122 of guidewire 25/125 as recited in the claims.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 4, 15, 21, 24, 26, 37 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over GIFFORD, III et al.-4,926,858.

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As to claims 2, 4, 15, 24, 26 and 37, GIFFORD, III-'858 discloses substantially every limitation as recited in the claims, except for retraction members of self expanding Nitinol. It would have been obvious to one of ordinary skill in the art at the time of the invention to make the retraction members of Nitinol as long as a wire/thread/suture fixed to proximal band 24/124 is provided to control when to release the self expanding nitinol retraction members as this would be another choice of design for the GIFFORD, III device.

As to claims 21 and 43, GIFFORD, III-'858 discloses substantially every limitation as recited in the claims, except for the retraction members are of non-rigid material. A non-rigid material is usually more flexible than a rigid material. It would be obvious to one of ordinary skill in the art at the time of the invention to provide the retraction members of a non-rigid material so as to enhance the flexibility of the retraction members.

Allowable Subject Matter

Claims 49-52 are allowed.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vy Q. Bui whose telephone number is 703-306-3420. The examiner can normally be reached on Monday-Tuesday and Thursday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T Nguyen can be reached on 703-308-2158. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


11/12/2004

Vy Q. Bui
Primary Examiner
Art Unit 3731